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Crl.O.P No.12966 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.12966 of 2023

and

Crl.M.P.No.7886 of 2023

1.Kumar

2.Pannerselvam

... Petitioners

vs.

State by its

Inspector of Police,

K11, Koyambedu Police Station,

Koyambedu, Chennai.

(Crime No.696/2020)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the III Additional City Civil Court at Chennai in Crl.M.P.No.7459 of 2023 in S.C.No.132 of 2021 order dated 30.03.2023.

For Petitioners : Mr.K.G.Senthilkumar

For Respondent : Mr.A.Gopinath

Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below dismissing the application filed under Section 91 of Cr.P.C. wherein the petitioners have sought for furnishing of certain documents.



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2. The petitioners are facing trial before the Court below for offence under Sections 294(b), 307, 324 r/w Section 34 of I.P.C. The prosecution had examined P.W.1 to P.W.8 and these witnesses have also been cross examined.

3. The petitioner filed an application under Section 91 of Cr.P.C. and sought for certain documents. This application was filed by the petitioners to establish the fact that the investigation officer, viz., P.W.8 could not have examined the witnesses and recorded their statements under Section 161(3) of Cr.P.C. on 12.08.2020, since he was suffering from Coronavirus attack.

4. The Court below on considering the claim made by the petitioners and also the stand taken by the respondent police came to a conclusion that the petitioners are attempting to fish for evidence to establish their defence and the Court below did not find any ground to entertain the application and accordingly, the application was dismissed by an order dated 30.03.2023. Aggrieved by the same, the present Criminal Original Petition has been filed before this Court.

5. Heard the learned counsel appearing for petitioners and the learned Government Advocate (Crl. Side) appearing on behalf of respondent.



WEB COPY 6. The main ground that was urged by the learned counsel for the petitioners after reading the deposition of P.W.2, P.W.7 and P.W.8 is that the investigation officer, viz., P.W.8 could not have recorded the statements of the witnesses on 12.08.2020 and the same can be established only if the Service Register of the P.W.8 is furnished.

7. In the considered view of this Court, the materials placed before this Court shows that P.W.8 had tested positive for Covid-19 and was admitted at the Omandurar Medical College and Hospital, Chennai during the relevant point of time. The short issue is as to whether P.W.8 could have conducted investigation on 12.08.2020 and recorded statements of the witnesses. For this purpose it is not necessary to furnish the Service Register of the P.W.8. It will suffice if a report is sought for from the Deputy Commissioner of Police as to whether P.W.8 had availed any leave during the month of August, 2020, i.e., from 01.08.2020 to 31.08.2020. If this report is permitted to be marked before the Court below, that will sufficiently take care of the grievance that has been expressed by the petitioners. To that extent this Court is inclined to modify the order passed by the Court below.



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8. Learned Government Advocate submitted that the witnesses on the side of the prosecution have already been examined and the accused persons have already been questioned under Section 313 of Cr.P.C. and the case is now at the stage of defence evidence. In view of the same, there shall be a direction to the Deputy Commissioner of Police, Anna Nagar Range to furnish the leave details of P.W.8, viz., Mr.Murugan for the period from 01.08.2020 to 31.08.2020 and the same shall be produced before the Court below on or before 28.07.2023. The same shall be marked as a Court document by the Court below. Thereafter, the Court below shall proceed further and dispose of the case in S.C.No.132 of 2021 as expeditiously as possible.

9. This Criminal Original Petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed.

18.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
rsi



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To
WEB COPY

- 1.The Inspector of Police,
K11, Koyambedu Police Station,
Koyambedu,
Chennai.
- 2.The III Additional Judge,
City Civil Court,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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N. ANAND VENKATESH, J.

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